

FILED

APR 18 2011

PATRICK E. DUFFY, CLERK

By _____
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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

MISSOULA DIVISION

LEONARD L. ROBERTS)	CV 10-146-M-DWM-JCL
)	
Petitioner,)	
)	
vs.)	ORDER
)	
WARDEN SAM LAW;)	
ATTORNEY GENERAL OF THE)	
STATE OF MONTANA,)	
)	
Respondents.)	
_____)	

Petitioner Leonard L. Roberts applied for a writ of habeas corpus under 28 U.S.C. § 2254. Roberts is a state prisoner proceeding pro se. United States Magistrate Judge Jeremiah C. Lynch entered Findings and Recommendation in this matter on February 8, 2011, recommending the Court dismiss Robert's

petition. Roberts timely objected. Therefore, he is entitled to de novo review of those portions of the Findings and Recommendation to which he objected. 28 U.S.C. § 636(b)(1). The portions of the Findings and Recommendation not specifically objected to will be reviewed for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981).

Roberts asserts he was sentenced twice for the same crime, in violation of the Fifth Amendment to the United States Constitution. He also claims his counsel was ineffective for failing to appeal his sentence and misleading Roberts into signing an illegal plea agreement.

Judge Lynch recommended dismissing the petition as time barred. Roberts objects that he sent petitions to the Attorney General and Ravalli County Attorney in November 2009.

Upon de novo review, I find no error in Judge Lynch's conclusion. In order to not be time barred, Roberts was required to file his federal habeas petition within one year of the date his conviction became final. 28 U.S.C. § 2244(d)(1)(A). His conviction was final on June 26, 2006, so Roberts was required to file his federal petition before June 26, 2007. Roberts waited until December 23, 2010. Even assuming that the time was tolled until Roberts' previously suspended sentence was revoked in July 2009, Roberts did not timely

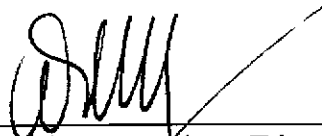
file a federal habeas petition. Therefore,

IT IS HEREBY ORDERED that Judge Lynch's Findings and Recommendation (dkt #10) are adopted in full. The Petition (dkt # 1) is DISMISSED WITH PREJUDICE as time-barred.

The Clerk of Court is directed to close this matter and to enter judgment in favor of Respondents and against Petitioner.

A certificate of appealability is DENIED.

Dated this 15 day of April, 2011.



Donald W. Molloy, District Judge
United States District Court

